

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIABoard of Supervisors of the
County of Nevada,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

Case 02-06-010
(Filed June 10, 2002)**DECISION APPROVING SETTLEMENT****I. Summary**

This decision approves a settlement (the full text of the settlement is attached as the Appendix to this decision) between the Board of Supervisors of Nevada County (County) and SBC Pacific Bell (SBC). The terms of the settlement provide that residents of Nevada County currently served by the Yuba County Smartville telephone exchange will be provided a Nevada County Grass Valley exchange local calling area.

A survey conducted by SBC shows a strong community of interest among affected customers with Nevada County, rather than Yuba County. Therefore, the exchange boundary will be modified to coincide with the Yuba County/Nevada County boundary, which will provide those customers with toll-free calling to their community of interest in Nevada County.

II. Background and Procedural History

The County filed its complaint on June 10, 2002. The complaint concerns a request by the County to modify the exchange boundary between the Smartville exchange and the Grass Valley Exchange to coincide with the Nevada County/Yuba County boundary line. At the present time, residents of Nevada County who live within the Smartville exchange must make toll calls, or pay additional long distance charges, to contact their representative government offices, police stations, fire stations, schools, health care professionals, financial institutions, and other miscellaneous service providers. The county asserts that those calls should be available to them without charge as residents of Nevada County.

SBC filed its answer to the County's complaint on July 31, 2002, and the assigned Administrative Law Judge (ALJ) held conference calls with the parties on August 15 and August 26, 2002. During the course of those conference calls the County clarified that it was not seeking an Extended Area Service route, and the issues and timetable for the proceeding were established. A Scoping Memo was issued by the Assigned Commissioner on October 9, 2002, setting dates for Public Participation Hearings (PPHs) and an evidentiary hearing.

In September 2002 SBC mailed a survey to each identified Nevada County customer who resides within the Smartville exchange seeking his/her opinion as to whether the local toll free calling area should be changed from Yuba County to Nevada County. Based on the returned surveys, the vast majority (177 of the 220 lines) of the affected subscribers who returned the survey requested a Grass Valley/Nevada City local calling area and were willing to accept new telephone numbers to obtain that calling area.

SBC also conducted a three-month traffic study for July, August and September 2002 that shows that over 75% of the toll calls currently made by the affected subscribers in the Smartville Exchange using SBC as the local toll provider, terminated at the Grass Valley/Nevada City exchanges.

On November 20, 2003, Public Participation Hearings were held at 2:00 p.m. and 7:00 p.m., and more than 30 members of the public participated in those hearings. Most of the speakers supported the change in the exchange boundary and expressed a strong community of interest with businesses and services in Nevada County, rather than Yuba County. Some of the complaints customers expressed were as follows:

- Affected customers incur toll charges for calls made to government offices and businesses in Nevada County.
- Residents incur toll charges to call neighbors who live only a short distance away.
- Customers are listed in the Yuba County Directory, not the Nevada County Directory. In one case, a physician was unable to reach one resident because she was not listed in the Nevada County directory.
- Customers receive copies of the Yuba County directory, but must pay an additional charge to receive the Nevada County directory.
- Family members in the hospital in Nevada County are unable to call home because it is not a local call.
- Businesses in Nevada County often do not return calls to the 639 prefix because it is a toll call for them.

On November 21, 2002, the date scheduled for the evidentiary hearing, the parties appeared and advised the assigned ALJ that they had reached an agreement. The parties agreed to waive the seven-day notice requirement under Rule 51.1(b), and proceeded to a settlement conference in lieu of the evidentiary

hearing. The parties filed their joint motion for approval of settlement agreement on December 19, 2002.¹

III. Description of Settlement

The settlement finds that the Nevada County residents residing within the Smartville exchange have a community of interest in Nevada County and determines that the exchange boundary should be modified to include the Nevada County Smartville exchange customers (*i.e.*, those currently with area code “530” and prefix “639 residing in Nevada County) in the Grass Valley Exchange. SBC determined after reasonable investigation that all Nevada County residents impacted by the exchange boundary modification will have a telephone number change. Affected customers will be provided with two customer notifications prior to the number change.

SBC determined that the requested boundary modification is technically feasible. Parties agreed that the boundary modification should be completed within 10 months of the Commission’s order approving the Settlement Agreement. SBC estimates that the costs associated with the exchange boundary modification to be \$300,000, and the parties agreed that the

¹ Holding a settlement conference is required pursuant to Rule 51.1(b) of the Commission’s Rules of Practice and Procedure, and parties are required to receive seven days notice of the settlement conference.

Commission should order recovery of those costs through a limited exogenous cost factor.

IV. Discussion

In order for a settlement to be approved by the Commission, the settlement must be: (1) reasonable in light of the whole record, (2) consistent with law, and (3) in the public interest. Rule 51.1(e).²

A. Reasonableness in Light of the Whole Record

The record of this proceeding clearly reflects that an overwhelming majority of the Nevada County residents located within the Smartville Exchange support an exchange boundary modification. Parties spent a great deal of time and effort in attending PPHs, reviewing traffic data and surveys, and investigating technical feasibility and costs. The Settlement Agreement is very closely based on the record developed by the parties, and is reasonable because it addresses the specific issues raised by the County in its complaint.

The settlement is reasonable in light of the whole record.

B. Consistent with the Law

The Settlement Agreement resolves the issues set forth in Nevada County's complaint and is the product of good faith negotiations between the parties. We conclude that it is consistent with the law.

C. In the Public Interest

The settlement would serve the public interest because it addresses the concerns raised by Nevada County's complaint. The Commission has held that "[t]he most important criterion to evaluate the adequacy of a local calling area is the measure of ability to meet customer calling needs for basic goods and services." (*McManamon v. Pacific T&T Co.* (1978) 84CPUC49,51.) An

² All rule citations are to the Commission Rules of Practice and Procedure, unless otherwise specified.

overwhelming majority of the Nevada County residents located within the Smartville Exchange support an exchange boundary modification because they have an economic or community interest in Nevada County. The record is clear that the exchange boundary modification will enable the affected subscribers to have affordable calling to their community of interest.

For these reasons, the Commission finds that the settlement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The settlement is approved pursuant to Rules 51 through 51.10.

V. Comments on Draft Decision

The parties indicate that they have settled all issues. Other than counsel for Nevada County and counsel for SBC, no party appeared at the Settlement Conference held on November 21, 2002. Also, as of the date of submission, there were no contested issues. Both parties agree to waive their rights for a 30-day comment period, pursuant to Rule 77.7(g). The parties submit that in light of the community support in favor of the exchange boundary modification, there is no good reason for further delay. In light of both parties' agreement, the draft decision was not mailed to parties for comment.

While this case was classified as adjudicatory and set for hearing, no evidentiary hearing was held so we are no longer governed by the provision of Article 2.5.

VI. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Karen Jones is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Nevada County residents residing within the Yuba County Smartville exchange have a community of interest in Nevada County.

2. The results of SBC's survey show that the vast majority of affected subscribers who returned the survey requested a Grass Valley local calling area.

3. The results of SBC's survey show that affected subscribers who want a Grass Valley local calling area are willing to accept new telephone numbers to obtain that calling area.

4. SBC's three-month traffic study for July, August and September 2002 shows that over 75% of the toll calls currently made by the affected subscribers in the Smartville Exchange using SBC as the local toll provider, terminated at the Grass Valley/Nevada City exchanges.

5. The exchange boundary modification will enable the affected subscribers to have affordable calling to their community of interest.

6. All Nevada County residents impacted by the exchange boundary modification will have a telephone number change.

7. The requested boundary modification is technically feasible.

8. SBC estimates that the costs associated with the exchange boundary modification to be \$300,000.

Conclusions of Law

1. The settlement is reasonable in light of the whole record. The boundary change is technically feasible and supported by a majority of the affected customers.

2. The settlement is consistent with the law.

3. The settlement is in the public interest because it addresses the concerns raised by Nevada County's complaint. An overwhelming majority of the Nevada County residents located within the Smartville exchange support an exchange boundary modification because they have an economic or community interest in Nevada County.

4. SBC should be authorized to request exogenous factor treatment for the estimated \$300,000 associated with the exchange boundary modification.

O R D E R

IT IS ORDERED that:

1. The Joint Motion for Approval of Settlement Agreement is approved.
2. SBC is authorized to request exogenous factor treatment for the estimated \$300,000 associated with the exchange boundary modification.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BOARD OF SUPERVISORS OF THE
COUNTY OF NEVADA,

Complainant,

v.

SBC PACIFIC BELL,

Defendant.

Case. No. 02-06-010

JOINT SETTLEMENT

SBC Pacific Bell Telephone Company (“SBC Pacific Bell”) and the County of Nevada (“Nevada County”) (collectively, the “Parties”) hereby agree upon the following terms for the settlement (the “Agreement”) of Nevada County’s complaint in California Public Utilities Commission Case No. 02-06-010:

I. Joint Statement of the Case

- A. The gravamen of Nevada County’s complaint is that Nevada County residents residing within the Smartville Exchange have an economic/community of interest in Nevada County and do not have affordable (toll free) calling to their local schools, police stations, fire stations, hospitals, doctors, dentists, banks, attorneys and shopping centers. Instead, every call of this kind places unwanted toll charges upon their telephone bills.
- B. The Nevada County Board of Supervisors recommended modifying the boundary of the Smartville Exchange to coincide with the Nevada County/Yuba County boundary line. Such a boundary change would place the Nevada County residents who are currently in the Smartville Exchange into the Grass Valley Exchange, resulting in a change to their rate center. Consequently, such

residents would no longer pay a toll to call the governmental offices, schools, business, and other consumer providers within their community of interest (Grass Valley, Nevada City and Penn Valley).

- C. SBC Pacific Bell's current charges for calls made between either the Smartville Exchange and the Grass Valley Exchange or the Smartville Exchange and the Nevada City Exchange are reasonable.
- D. In 2001, approximately 200 signatures were submitted to the Nevada County Board of Supervisors requesting that the Board of Supervisors institute California Public Utility Commission ("Commission") proceedings in support of a modification to the Smartville Exchange boundary line to coincide with the Nevada County/Yuba County boundary line.
- E. In September 2002, SBC Pacific Bell mailed a survey to each identified Nevada County customer who resides within the Smartville Exchange seeking his/her opinion as to whether the local toll free calling area should be changed from Yuba County to Nevada County. Based on the returned surveys, the vast majority (177 of the 220 lines) of the affected subscribers who returned the survey requested a Grass Valley/Nevada City local calling area and were willing to accept new telephone numbers to obtain that calling area.
- F. SBC Pacific Bell also conducted a three-month traffic study, *i.e.*, call volumes for July, August and September 2002, that showed over 75% of the toll calls currently made by the affected subscribers in the Smartville Exchange using SBC Pacific Bell as a local toll provider, terminated at the Grass Valley/Nevada City Exchanges.
- G. The survey data and traffic study support a Commission finding that a community of interest as defined by the Commission's earlier Extended Area

Service decisions, exists between the Nevada County subscribers located in the Smartville Exchange and the Grass Valley and Nevada City calling areas.

H. Nevada County has requested that the boundary be modified to include the Nevada County Smartville Exchange customers (*i.e.*, those currently with area code "530" and "639" prefixes residing in Nevada County) in the Grass Valley Exchange. The requested boundary modification is technically feasible.

I. The terms of the Agreement set forth below shall apply only to this Complaint.

II. Terms of the Agreement

- A. SBC Pacific Bell agrees to modify the Grass Valley and Smartville Exchange boundaries so that the Smartville Exchange boundary line coincides with the Nevada County/Yuba County boundary line.
- B. The Parties agree that SBC Pacific Bell will have ten months from the effective date of a Commission decision adopting this Agreement to implement the boundary modification and to change the affected subscribers' telephone numbers and calling area.
- C. Upon receiving the Commission's Decision, SBC Pacific Bell will file an Advice Letter and relevant tariff sheets with the Commission to reflect the change in the Grass Valley and Smartville Exchange boundaries. The affected customers will be subject to the same billing rates currently charged to customers residing in the Grass Valley Exchange.
- D. The expansion of the Grass Valley boundary to include the affected Smartville subscribers will result in reasonable rates for SBC Pacific Bell customers.
- E. SBC Pacific Bell has determined that *all* Nevada County residents impacted by the exchange boundary modification will have a number

change and will be provided with two customer notifications prior to the number change.

F. The costs associated with this exchange boundary modification are estimated at \$300,000.

G. The Parties jointly agree that the Commission should order recovery of all related costs associated with this exchange boundary modification through a limited exogenous cost factor.

III. General Terms

A. No Admission. This Agreement is entered into in full compromise of all issues related to Nevada County's complaint that Nevada County residents residing within the Smartville Exchange have an economic/community of interest in Nevada County and do not have affordable calling to their local schools, police stations, fire stations, hospitals, doctors, dentists, banks, attorneys and shopping centers. This claim arises out of C. 02-06-010. It is acknowledged by the undersigned Parties that the execution of this Agreement is not and shall not be construed as an admission of imprudence, wrong-doing, or liability and that this Agreement reflects a mutual desire to move expeditiously in resolving the issues in the interest of all Parties.

B. No Precedent. This Agreement represents a compromise. The undersigned Parties have entered into this Agreement on the basis that the Commission's adoption of the terms and conditions set forth herein not be construed as precedent regarding any principle or issue in any current or future proceeding. The issue resolved by this Agreement should not be construed as reflecting the undersigned parties' views or position except as a reasonable and appropriate compromise of the issues involved.

C. Inadmissibility. In accordance with Rule 51.9 of the Commission's Rules of Practice and Procedure, no discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation

regarding a stipulation or settlement shall be subject to discovery or admissible in any evidentiary hearing against any participant who objects to its admission.

- D. Dismissal and Release.
 - i. Nevada County, on behalf of itself and all consumers and ratepayers it represents, releases SBC Pacific Bell and their directors, officers, employees, agents, attorneys, shareholders, affiliates, successors, and assigns from all claims and liabilities arising out of the specific Complaint issues. Nothing in this Section however, shall preclude an action to enforce this Agreement.
 - ii. Nevada County will not pursue claims against SBC Pacific Bell related to the Complaint issues.
 - iii. The Parties support this Agreement as being fair and reasonable in light of the record, consistent with the law, and in the public interest, and all parties agree not to take any action, which would undermine this Agreement and the manner in which it has been negotiated.
 - iv. Nevada County agrees that upon Commission approval of the Agreement, the Complaint will be dismissed.
- E. Obligations Imposed by Commission. Unless specifically set forth in this Agreement, none of the Parties intend to alter or change its obligations imposed by the orders, rules, regulations, or decisions of the Commission.
- F. No Waiver. By entering into this Agreement SBC Pacific Bell does not waive its right to contest the extent of the Commission's jurisdiction or authority to impose any requirement of this Agreement in any other proceeding.

- G. Other Proceedings. The Parties agree that neither the Joint Statement of the Case nor anything contained in this Agreement constitutes a binding admission or concession in any other proceeding. The Parties have entered into this Agreement to achieve a compromise and settlement of the contested matters pending before the Commission.
- H. Further Documents. The Parties agree to execute such other or further documents or instruments and to take such other or further action as may be necessary or desirable to implement the terms and provisions of this Agreement.
- I. Severability. No individual term of this Agreement is assented to by any party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.
- J. Successors. This Agreement and all covenants set forth herein shall be binding and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, agents, attorneys, officers, directors and shareholders.
- K. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily. Each Party further acknowledges that it has had the

opportunity to consult with counsel and discuss the provisions hereof and the consequences of signing this Agreement, and that each Party or their counsel have made such investigation of the facts and law pertaining to the matters herein as they deem necessary, and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Agreement.

- L. Entire Agreement. The Parties expressly acknowledge that the consideration in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof, other than as set forth expressly in this Agreement. This writing constitutes the entire agreement between the Parties and no terms herein may be waived, modified or amended, except in a writing signed by both Parties.
- M. Choice of Law. This Agreement shall in all respects be interpreted, enforced and governed exclusively by and under the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission. This Agreement is deemed to have been jointly prepared by the Parties, and all uncertainty or ambiguity existing herein shall not be interpreted against any Party.
- N. Commission Jurisdiction. The Parties agree that the California Public Utilities Commission shall have exclusive jurisdiction over any issues related to this Agreement, and that no other court, regulatory agency, or other governing body shall have jurisdiction over any issue related to the interpretation of this Agreement, the enforcement of the Agreement, or the rights of the Parties to the Agreement (with the exception of the California

Court of Appeal or California Supreme Court in connection with the review of any Commission decision). All rights and remedies are limited to those available before the California Public Utilities commission. The Parties further agree that no signatory to this Agreement, nor any member of the staff of the Public Utilities Commission, assumes personal liability as a result of this Agreement. The Parties agree that no legal action may be brought in any state or federal court, or in any other forum, against any individual signatory, Party representative, or staff member related to this Agreement.

- O. Execution. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.
- P. Comment Period. The Parties jointly waive California Rules of Practice and Procedure 51.4's 30 day period for comment on a stipulation or settlement.
- Q. Approval by CPUC. This Agreement shall be effective upon approval by the Commission.

PACIFIC BELL TELEPHONE COMPANY

Dated: _____

 Cynthia G. Marshall
 Pacific Bell Telephone Company
 140 New Montgomery Street
 San Francisco, CA 94105

Dated: _____

 PRINT NAME
 BOARD OF SUPERVISORS
 NEVADA COUNTY

(End of Appendix A)